IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4300 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOGANINAGAR COMPLEX CO OP HOU SOCIETY LTD

Versus

STATE OF GUARAT

Appearance:

1. Special Civil Application No. 4300 of 1994

MS K J BRAHMBHATT for MS VASUBEN P SHAH for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the impugned notice dated 04/02/1994, at Anneuxre-A to the petition and the impugned order dated 31/07/1993 passed by respondent no.2

herein.

2. The petitioner is a co-operative society registered under the provisions of the Gujarat Co-operative Societies Act. The petitioner Society had purchased property located in Surat District under a Sale Deed registered on 18/01/1990. Respondent no.2 herein in exercise of the powers conferred upon him under Section 32-A of the Bombay Stamps Act issued the impugned notice dated 04/02/1994, at Annexure-A to the petition.

3. Feeling aggrieved by the action of the respondent authority the petitioner has preferred this petition before this Court.

4. Ms.K J Brahmbhatt for Ms.V P Shah for the petitioner Society has contended that the petitioner was never served with the impugned notice dated 12/04/1993, at Annexure-A to the petition, nor any order to that effect was passed by respondent no.2 in pursuance of such a notice. She has contended that the petitioner Society had come to know about the said order dated 31/07/1993, only when it received the notice dated 12/04/1993, at Annexure-A to the petition.

5. Ms.Brahmbhatt for the petitioner Society has further contended that the notice in question was not issued to the petitioner within the stipulated period, as provided under Section 32-(A) of the Bombay Stamps Act. She has submitted that the document in question was registered on 18/01/1990 and proceedings were initiated by respondent no.2 against the petitioner under Section 32-(A) of the said Act, after a lapse of two years from the date of registration. Therefore, the said act of the respondent authority is violative of the provisions contained in the said Act. She has submitted that in view of the Full Bench decision of this Court reported in 1992(1) 33-(1) G.L.R., p.654, the prescribed time limit for review is two years.

6. I have heard learned counsel for the parties and perused the relevant documents on record. Though Rule was issued on 15/04/1994 and time was granted to enable the respondents to file their reply, no reply has been filed till today. Therefore, the contentions raised in the petition have not been disputed.

7. The document in question was registered on 18/01/1990 and the impugned notice was issued on 04/02/1994. Thus, the provisions contained in Section 32-(A) of the said Act have been violated by the

respondents.

8. Moreover, the order passed by the respondent authority is contrary to the law declared by this Court. The Deputy Collector had no jurisdiction to issue the order in question, in view of the Full Bench decision of this Court. Hence, the order of the Deputy Collector is required to be quashed and set aside on the ground that notice was issued without jurisdiction and the impugned order was passed without following the due procedure of law. Hence, the petition is required to be allowed.

9. In the result, the petition is allowed. The order of the respondent authorities dated 31/07/1993 and the notice dated 04/02/1994, at Annexure-A to the petition, are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. Jhaveri, J.)

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